



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

May 1, 2006

Maria M. Oms
Auditor-Controller
John F. Krattli
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: Indra Systems, Inc. v. County of Los Angeles
Los Angeles Superior Court Case No. BC 323 293

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$237,500.00.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Registrar-Recorder/County Clerk and Internal Services Department.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed for your information are the Corrective Action reports submitted by the Registrar-Recorder/County Clerk and Internal Services Department.

Return the executed, adopted copy to Georgene Salisbury, Suite 648
Kenneth Hahn Hall of Administration, Extension 4-1803.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO:gs

Enclosures

REVISED

MEMORANDUM

April 12, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ELIZABETH M. CORTEZ
Assistant County Counsel
Government Services Division

RE: Indra Systems, Inc. v. County of Los Angeles
Los Angeles County Superior Court Case No. BC 323293

DATE OF
INCIDENT: July 10, 2003

AUTHORITY
REQUESTED: \$237,500

COUNTY
DEPARTMENT: Registrar-Recorder/County Clerk and Internal Services Department


CLAIMS BOARD ACTION:

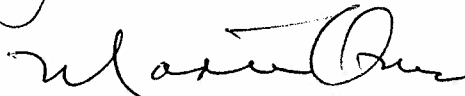
☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on May 1, 2006

SUMMARY

This is a recommendation to settle for \$237,500, the lawsuit filed by Indra Systems, Inc. ("Indra") for breach of contract arising from the issuance of a Purchase Order ("PO") by the Internal Services Department ("ISD") for electronic poll books ("EPBs") to be used by the Registrar-Recorder/County Clerk ("Registrar").

LEGAL PRINCIPLES

A public entity is responsible for breach of contract damages when an enforceable contract exists, and the public entity refuses delivery of the goods. When a breach of contract has occurred, the aggrieved party should be put in as good a position as if the party had fully performed, except that a seller still in possession of goods must make attempts to mitigate its damages by reselling or leasing the goods.

SUMMARY OF FACTS

On July 10, 2003, a PO was issued by ISD's Purchasing Division for EPBs to be used on a test basis in future elections by the Registrar. The facts surrounding the issuance of the PO and ultimate rejection of the goods by the Registrar are as follows:

- A PO was issued on July 10, 2003, based on information in the possession of ISD as of June 30, 2003, i.e. the close of the fiscal year. The PO stated a purchase price of \$3,223.07 for the economy model, and \$4,293.47 for the robust model.
- ISD and the Registrar negotiated and finalized further price reductions with Indra, and Indra submitted their reduced price offering in writing to ISD after the close of the fiscal year. Indra offered a reduced price of \$1,998 for the economy model and \$1,988 for the robust model, which the Registrar accepted.
- ISD created and issued an amended PO reflecting the price reduction that had been negotiated on August 11, 2003. However, the amended PO had an incorrect mailing address for Indra as Vienna, CA, rather than Vienna, VA. ISD cannot confirm that the amended PO was mailed or whether the amended PO

actually reached Indra. Indra claims it never received the amended PO containing the price reductions.

- The Registrar was under the mistaken impression that the PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPBs on a pilot basis. The Registrar's staff inserted language into the PO which they thought gave them the ability to decide at a later time whether to purchase any EPBs at all. This language conflicted with the other terms of the PO which indicated that an initial order of 230 units was to be purchased and any remaining quantities would be purchased at a later time at the sole discretion of the Registrar.

- On August 8, 2003, Indra communicated via email with the Registrar's project manager and other staff indicating that they acknowledged that they had been awarded the contract as indicated on the County's website, and that they had some questions but were otherwise ready to produce the products. For reasons beyond the Registrar's control, such as the unexpected special election to recall the Governor, this email went unanswered until October 16, 2003. By that time, Indra had already produced the EPBs, and were preparing for shipment.

- On November 10, 2003, Indra sent an email to the Registrar's project manager indicating that the EPBs were fully loaded with software and ready to ship. There were also many unanswered telephone calls between August and October by Indra attempting to confirm a delivery date.

- On February 17, 2004, Indra attempted delivery of the EPBs which were refused by the Registrar.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Contract Damages:	\$773,418
Interest:	\$177,953
Total	<u>\$951,371</u>

The settlement calls for the County to pay Indra \$237,500 for all of its claims and costs. The case will be dismissed with prejudice with both sides bearing their own attorney's fees.

STATUS OF CASE

The lawsuit was filed on October 21, 2004. The matter was scheduled for trial on April 26, 2006. The Court ordered the parties attend a mandatory settlement conference on April 15, 2005. The plaintiffs offered to settle the case for \$500,000, which the County refused. Further discussions appeared fruitless, ending the settlement conference. After a considerable amount of discovery, the parties agreed to attend private mediation. In January, plaintiffs made what they characterized as a final offer of \$350,000, and refused to attend the mediation. Upon motion by defense counsel, the Court ordered the parties to attend a settlement conference with Judge Owen Kwong in Department 98 on March 1, 2006. This proposed settlement was reached during the settlement conference with Judge Kwong.

In light of the proposed settlement, the Court has vacated the trial previously scheduled for April 26, 2006.

The County has incurred approximately \$75,000 for defense attorney's fees and \$11,000 in other costs.

EVALUATION

Discovery in this case has been aggressively conducted and defended by the plaintiffs. Numerous depositions have been noticed by plaintiffs, however, the County was able to postpone the depositions in hope of reaching a settlement. At trial, Indra would argue with the support of the law that the PO was a contract and bound the County to purchase the EPBs.

Indra will further argue that the initial PO at the higher price was the final memorialization of the contract. The Uniform Commercial Code provides that evidence of a prior or contemporaneous agreement is not admissible to contradict terms set in writing. As such, it is unclear whether discussions regarding the price negotiations would be admitted by the Court.

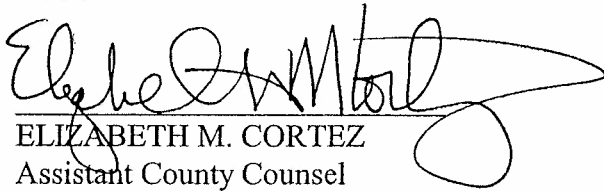
Defense counsel was able to gather evidence that Indra had leased the EPBs to mitigate its damages. As such, the EPBs are now in a used condition. The County was able to use this information in the settlement conference to reduce the damages incurred by Indra. However, at trial, Indra will argue that the

projects in which the EPBs were leased were pilot projects which did not result in any net profit to Indra after all expenses of the pilot projects are calculated.

A reasonable settlement at this time will avoid the potential that a jury trial on the issue of breach of contract could result in a verdict that substantially exceeds the proposed settlement.

We join with our private counsel, Tharpe & Howell, in recommending a settlement of this matter in the amount of \$237,500. The Registrar-Recorder/County Clerk and Internal Services Department concur in this settlement recommendation. The settlement payment will be allocated 75% from the Registrar-Recorder/County Clerk, and 25% from ISD.

APPROVED:



ELIZABETH M. CORTEZ
Assistant County Counsel
Government Services Division

EMC: JW:ds

CORRECTIVE ACTION PLAN

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REGISTRAR-RECORDER/COUNTY CLERK CORRECTIVE ACTION PLAN

LAWSUIT OF: INDRA SYSTEMS, INC. V. COUNTY OF LOS ANGELES,
LASC Case No. BC 323293.

INCIDENT DATE: Purchase Order # 31031597 issued for Electronic Poll
Books on July 10, 2003; Claim Filed with Board of
Supervisors, August 10, 2004.

INCIDENT LOCATION: Registrar-Recorder/County Clerk headquarters, 12400
Imperial Highway, Norwalk, California 90651.

RISK ISSUE:

A public entity is responsible for breach of contract damages when an enforceable contract exists, and the public entity refuses delivery of the goods. When a breach of contract has occurred, the aggrieved party should be put in as good of a position as if the party had fully performed, except that a seller still in possession of goods must make attempts to mitigate their damages by reselling or leasing the goods.

INCIDENT SUMMARY:

This breach of contract lawsuit was the result of the issuance of a purchase order ("PO") on July 10, 2003, by the Internal Services Department's ("ISD") Purchasing Division. The product to be purchased was electronic poll books ("EPB's") which were anticipated to be used on a test basis in future elections by the Registrar-Recorder/County Clerk ("Registrar"). A number of problems surrounding the issuance of the PO occurred as follows:

- 1) The PO stated a total order of 439 EPB units (414 of the economy model and 25 of the robust model) while at the same time an initial order of 230 units (200 economy model and 30 robust model) was stated, creating a conflict as to whether 230 units or 439 units were ordered.

CORRECTIVE ACTION PLAN

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- 2) The PO stated a purchase price of \$3,223.07 for the economy model, and \$4,293.47 for the robust model, even though further price negotiation had already been conducted between the County and Indra for a reduced price of \$1,998 for the economy model and \$1,988 for the robust model.
- 3) An amended PO reflecting the price reduction that had been previously negotiated prior to the issuance of the original PO was not created until August 11, 2003, due to the leave of absence of the original contract analyst at ISD. The amended PO was not processed in the normal electronic manner by ISD, and therefore no internal tracking of the PO could be determined.
- 4) ISD cannot confirm that the amended PO was mailed. Indra claims it never received the amended PO containing the price reductions. Both the original PO and the amended PO had an incorrect mailing address for Indra as Vienna, CA, rather than Vienna, VA. An undetermined employee had handwritten over the CA, and replaced it with VA, however it cannot be confirmed whether either PO listed the correct address and actually reached Indra.
- 5) The Registrar was under the mistaken impression that the PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPB's on a pilot basis. The Registrar's staff inserted language into the PO which they thought gave them the ability to decide at a later time whether to purchase any EPB's at all. This language conflicted with the other terms of the PO which indicated that an initial order of 230 units was to be purchased and any remaining quantities would be purchased at a later time at the sole discretion of the Registrar.
- 6) On August 8, 2003, Indra communicated via email with the Registrar's project manager and other staff indicating that they acknowledged that they had been awarded the contract as indicated on the County's website, and that they had some questions but were otherwise ready to produce the products. This email went unanswered until October 16, 2003. By that time, Indra had already produced the EPB's, and were preparing for shipment.
- 7) On November 10, 2003, Indra sent an email to the Registrar's project manager indicating that the EPB's were fully loaded with software and ready to ship. There were also many unanswered telephone calls between August and October by Indra attempting to confirm a delivery date.
- 8) On February 17, 2004, Indra attempted delivery of the EPB's which were refused by the Registrar.

CORRECTIVE ACTION PLAN

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POLICY ISSUES:

The PO was created and approved by ISD and Registrar staff members in spite of conflicting and erroneous material terms.

The Registrar was under the impression that a PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPB's on a pilot basis.

CORRECTIVE ACTION:

By August 15, 2006, the Assistant Registrar-Recorder/County Clerk, Administration, will issue a policy that no Purchase Order will be approved under any conditions if it contains terms that are inaccurate, have already been renegotiated, or need further negotiation.

By August 15, 2006, the Assistant Registrar-Recorder/County Clerk, Administration, will issue a policy that no Purchase Order will be issued solely for the purpose of encumbering funds. Incorporated within said policy will be the instructions that Departmental staff will work with appropriate central departments (i.e.: CAO, ISD, etc.) to determine the best method to encumber funds when planning for a pilot project.

By August 15, 2006, the Assistant Registrar-Recorder/County Clerk, Administration will establish clear written responsibilities for the project managers on County Purchase Order projects including but not limited to timely response(s) to vendors, particularly when material terms are in question. In the absence of a project director and/or manager, designate an alternate to act on behalf of the project director and/or manager.

CORRECTIVE ACTION PLAN

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REVISED

INTERNAL SERVICES DEPARTMENT CORRECTIVE ACTION PLAN

LAWSUIT OF: **INDRA SYSTEMS, INC. V. COUNTY OF LOS ANGELES,
LASC Case No. BC 323293.**

INCIDENT DATE: **Purchase Order # 31031597 issued for Electronic Poll
Books on July 10, 2003; Claim Filed with Board of
Supervisors, August 10, 2004.**

INCIDENT LOCATION: **Registrar-Recorder/County Clerk headquarters, 12400
Imperial Highway, Norwalk, California 90651.**

RISK ISSUE:

A public entity is responsible for breach of contract damages when an enforceable contract exists, and the public entity refuses delivery of the goods. When a breach of contract has occurred, the aggrieved party should be put in as good of a position as if the party had fully performed, except that a seller still in possession of goods must make attempts to mitigate their damages by reselling or leasing the goods.

INCIDENT SUMMARY:

This breach of contract lawsuit was the result of the issuance of a purchase order ("PO") on July 10, 2003, by the Internal Services Department's ("ISD") Purchasing Division. The product to be purchased was electronic poll books ("EPB's") which were anticipated to be used on a test basis in future elections by the Registrar-Recorder/County Clerk ("Registrar"). A number of problems surrounding the issuance of the PO occurred as follows:

- 1) The PO stated a total order of 439 EPB units (414 of the economy model and 25 of the robust model) while at the same time an initial order of 230 units (200 economy model and 30 robust model) was stated, creating a conflict as to whether 230 units or 439 units were ordered.
- 2) The PO stated a purchase price of \$3,223.07 for the economy model, and \$4,293.47 for the robust model, even though further price negotiation had already been conducted between the County and Indra for a reduced price of \$1,998 for the economy model and \$1,988 for the robust model.

CORRECTIVE ACTION PLAN

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- 3) An amended PO reflecting the price reduction was not created until August 11, 2003, based on a delay in the transition of this contract assignment to another analyst at ISD because the original contract analyst had left County service during this period.
- 4) The amended PO had an incorrect mailing address for Indra as Vienna, CA, rather than Vienna, VA. An undetermined employee (believed to be the newly assigned analyst) had handwritten over the "CA," and replaced it with "VA," however it cannot be confirmed at what point the handwritten address change on the PO occurred or whether the PO actually reached Indra at the correct address. Indra claims it never received the amended PO containing the price reductions.
- 5) The Registrar was under the mistaken impression that the PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPB's on a pilot basis. The Registrar's staff inserted language into the PO which they thought gave them the ability to decide at a later time whether to purchase any EPB's at all. This language conflicted with the other terms of the PO which indicated that an initial order of 230 units was to be purchased and any remaining quantities would be purchased at a later time at the sole discretion of the Registrar.
- 6) On August 8, 2003, Indra communicated via email with the Registrar's project manager and other staff indicating that they acknowledged that they had been awarded the contract as indicated on the County's website, and that they had some questions but were otherwise ready to produce the products. This email went unanswered until October 16, 2003. By that time, Indra had already produced the EPB's, and were preparing for shipment.
- 7) On November 10, 2003, Indra sent an email to the Registrar's project manager indicating that the EPB's were fully loaded with software and ready to ship. There were also many unanswered telephone calls between August and October by Indra attempting to confirm a delivery date.
- 8) On February 17, 2004, Indra attempted delivery of the EPB's which were refused by the Registrar.

CORRECTIVE ACTION PLAN

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POLICY ISSUES:

The PO was created and approved by ISD and Registrar staff members in spite of conflicting and erroneous material terms.

Indra claims that they did not receive the amended PO and ISD cannot determine at what point the incorrect address was changed because it was handwritten, outside of the automated system. Indra also claims that the original PO constituted the full agreement, and the amendment which contained the price reduction was of no effect. Because there is no means to verify when the handwritten change of address occurred, it becomes difficult to prove receipt and acceptance of terms by the vendor.

ISD employs an automated procurement system that provides for updates, changes and modifications to PO as well as vendor information, such as address changes, that provide an automated tracking and reporting mechanism for validation purposes. However, this system was not used to effect the address change so it cannot be determined at what point the correct address was handwritten on the amended PO.

The Registrar was under the impression that a PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPB's on a pilot basis. In the election environment, the Registrar needs to plan in advance to test certain products and was attempting to use the PO as the process.

CORRECTIVE ACTION:

- 1) The cause of the problem was that the address was not correct in the system on the original PO and was not updated or changed before the amendment was completed. ISD Purchasing Division Manager has reemphasized existing training standards and instructions provided to the Purchasing and Contracts Analysts on staff that any and all changes, modifications or updates required or effected on PO documents, vendor records and/or any other related document maintained in the automated procurement system must be accomplished in the system.
- 2) ISD will work with the Auditor-Controller to review departmental requisition approval authority levels and to develop Countywide standards to strengthen expenditure approval authority controls.
- 3) In conjunction with the annual distribution of the fiscal year closing procedures for purchase orders, ISD will add instructions reemphasizing that purchase orders are only for actual orders of goods and services and in no instance should be used as a mechanism merely to encumber funds.